

# EXHIBIT B

EXHIBIT B

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1 COMP  
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4 Attorneys for Plaintiffs

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CD/CB  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

OFFICE OF THE ATTORNEY GENERAL  
CARSON CITY, NEVADA

MAY 30 2008

BUREAU OF PUBLIC AFFAIRS  
PUBLIC SAFETY DIVISION

Case No.: A546038  
Dept. No.: XII

COMPLAINT

9 HELEN JANE ROMERO, as special  
10 administratrix of the estate of Anthony  
Gilbert Beltran, deceased; HELEN JANE  
ROMERO, as Guardian ad Litem for  
11 ANTHONY G. BELTRAN, JR., a minor  
child, as heir to Anthony Gilbert Beltran;  
12 BRITNIE NICOLE BELTRAN, a minor  
child, as heir to Anthony Gilbert Beltran and  
13 CHRISTIAN LEO CLIFFORD BELTRAN, a  
minor child, as heir to Anthony Gilbert  
Beltran,

14 Plaintiffs,

15 vs.

16 NEVADA DEPARTMENT OF  
CORRECTIONS, a political subdivision of  
the State of Nevada; E.K MCDANIEL,  
18 individually and in his official capacity,  
GLEN WHORTON, individually and in his  
19 official capacity, TRENT HOWES,  
individually and in his official capacity,  
20 JASON STOLK, individually and in his  
official capacity; THERESA LANDON,  
21 individually and in her official capacity; OFC.  
OTERO, individually and in his official  
22 capacity; "CASEWORKER" DRAIN,  
individually and in his official capacity;  
23 "COUNSELOR" R. CANDLISS, individually  
and in his official capacity; DOES I - X  
inclusive; and, ROES I - X inclusive,

24 Defendants.

25  
26 HELEN JANE ROMERO as Special Administratrix of the Estate of Anthony Gilbert Beltran  
27 (deceased), HELEN JANE ROMERO as Guardian ad Litem for ANTHONY G. BELTRAN JR.,  
28

1 BRITNIE NICOLE BELTRAN, and CHRISTIAN LEO CLIFFORD BELTRAN, (hereinafter  
2 "Plaintiffs") by and through their counsel of record, the law firm of HAM GALLIHER, LLP, hereby  
3 sets forth their Complaint as follows:

I.

## **JURISDICTION AND VENUE**

6 1 At all times relevant hereto, all Plaintiffs are and were residents of San Bernardino  
7 County, California.

8       2. At all times relevant hereto, NEVADA DEPARTMENT OF CORRECTIONS was  
9 a political subdivision of the State of Nevada and owns and/or operates penal correctional facilities  
10 within Nevada including the Ely State Prison.

11       3.     At all times relevant hereto, E.K. MCDANIEL was and is the Warden of Ely State  
12     Prison and Ely Conservation Camp.

13       4. At all times relevant hereto, GLEN WHORTON was Director of the Nevada  
14 Department of Corrections.

15       5. At all times relevant hereto, TRENT HOWES was and is a corrections officer  
16 employed by the Nevada Department of Corrections at Ely State Prison.

17       6. At all times relevant hereto, JASON STOLK was and is a corrections officer  
18 employed by the Nevada Department of Corrections at Ely State Prison.

19       7. At all times relevant hereto, THERESA LANDON was a corrections officer  
20 employed by the Nevada Department of Corrections at Ely State Prison.

21       8. At all times relevant hereto, "Officer" OTERO was and is a corrections officer  
22 employed by the Nevada Department of Corrections at Ely State Prison.

23       9. At all times relevant hereto, "Caseworker" DRAIN was and is an inmate caseworker  
24 employed by the Nevada Department of Corrections at Ely State Prison.

25       10. At all times relevant hereto, "Counselor" R. CANDLISS was and is an inmate  
26 counselor/caseworker employed by the Nevada Department of Corrections at Ely State Prison.

27       11. The true names and capacities, whether individual, corporate, associate, or otherwise,  
28 of Defendant(s) named herein as DOES 1 through 10, inclusive, and ROES 1 through 10, inclusive.

1 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names; Plaintiffs are  
2 informed and believe and thereupon allege that each of the Defendants designated herein as DOE  
3 and ROE are responsible in some manner for the events and happenings referred to, and caused  
4 damages proximately to Plaintiffs as herein alleged, and Plaintiffs will ask leave of the Court to  
5 amend the First Amended Complaint to insert the true names and capacities of DOES 1 through 10,  
6 inclusive, and ROES 1 through 10, inclusive, when the same have been ascertained, and to join such  
7 Defendants in this action.

12. Jurisdiction and venue are proper as this action arises out of an Incident that took  
place in White Pine County, Nevada.

II.

## GENERAL ALLEGATIONS

12        13. That Ely State Prison is a penal detention facility operated by the Nevada Department  
13 of Corrections (hereinafter "NDOC"). The NDOC is a political subdivision of the State of Nevada  
14 and employs officers and/or deputies whose duties include supervision and execution of all  
15 operational duties at Ely State Prison.

16        14.      Opened in 1989, Ely State Prison is a maximum security prison consisting of  
17 operations and support buildings and four (4) buildings containing housing units. Inmates should  
18 be assigned to units and cells depending upon the inmate's sentence structure, institutional behavior  
19 and disciplinary records.

15. That due to prison overcrowding the Nevada Department of Corrections, through  
Defendants GLEN WHORTON and E.K. MCDANIEL, instituted a policy of "double bunking"  
inmates, or placing two inmates into one cell, at Ely State Prison.

23       16. That on or about December 20, 2006, Anthony Gilbert Beltran, deceased, (hereinafter  
24 "Beltran") was incarcerated at the Ely State Prison. Beltran was placed in a cell with Douglas Potter  
25 (hereinafter "Potter").

26        17. That inmate Potter had previously been charged of Battery of a Prisoner and had  
27 informed prison officials on numerous previous occasions that he would severely injure any inmate  
28 "double bunked" with him.

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1       18. That on the morning of December 28, 2006, at approximately 8:10 a.m., defendant  
2 TRENT HOWES was preparing to take Beltran and Potter to the showers. Officer Howes, standing  
3 outside the locked cell, handcuffed Beltran's hands through the foodslot in the cell door. As soon  
4 as Beltran was completely restrained with the handcuffs, Potter ran from the back of the cell and  
5 began striking Beltran on the right side of his body with what appeared to be a silver colored bar.

6           19. At approximately 8:15 a.m., Officer Howes, Officer Stolk and other responding staff  
7 members entered the cell. Beltran was moved out of the cell into the corridor.

8        20. Beltran was found to be without a pulse and unresponsive. Beltran was transported  
9 to the facility's infirmary. Beltran did not respond to resuscitation attempts. All attempts to  
10 resuscitate Beltran were discontinued at approximately 8:48 a.m.

11        21. On December 28, 2006, Beltran's body was transported to the Washoe County  
12 Coroners Office. An autopsy was conducted on December 29, 2006. Beltran was found to have  
13 fourteen (14) puncture wounds to the trunk, resulting in puncture wounds to the right lung, heart,  
14 aorta and liver. The cause of death was determined to be multiple puncture wounds to the trunk and  
15 internal organs.

16        22. That Beltran is survived by his mother, Helen Jane Romero and his three children,  
17 Anthony G. Beltran, Jr., Britnie Nicole Beltran, and Christian Leo Clifford Beltran,

**FIRST CAUSE OF ACTION**  
(Violation of 42 U.S.C. § 1983 against all Defendants)

21 23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
through 22 of the Complaint and hereby incorporates the same as though fully set forth herein.

24. That Beltran was an inmate of the Ely State Prison on or about December 28, 2006.

25. That Ely State Prison is controlled and operated by the Nevada Department of  
24 Corrections, a political subdivision of the state of Nevada, and the actions of Defendants alleged  
25 herein were conducted under the color of law.

26. That Beltran's Constitutional rights under the Fifth, Eighth and Fourteenth  
27 Amendments to the United States Constitution were violated when Defendants dangerously double-  
28 bunked inmates at the Ely State Prison and failed to protect Beltran.

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1       27. That inmates were placed into cells together without regard to the inmate's sentence  
 2 structure, institutional behavior and/or disciplinary records resulting in dangerous conditions for  
 3 inmates, including Beltran, and prison personnel.

4       28. That Defendants, in deliberate disregard of Beltran's constitutional rights, placed  
 5 Beltran into a cell with an inmate known to be violent and who had specifically threatened the life  
 6 of any inmate placed within that cell.

7       29. That on or about December 28, 2006, Beltran was violently attacked by Potter.

8       30. That, as a result of the attack, Beltran suffered extensive and severe injuries that  
 9 resulted in his death.

10      31. That Defendants were deliberately indifferent to the needs of prison inmates,  
 11 including Beltran, regarding the conditions of confinement. Defendants knowingly and purposely  
 12 placed Beltran into a prison cell with Potter; an inmate known to be violent and who had previously  
 13 threatened violence of the exact nature inflicted upon Beltran.

14      32. That some of Defendants unconstitutional practices, policies, regulations or customs  
 15 include: 1) deliberate indifference when "double bunking" cells without regard to sentence structure,  
 16 institutional behavior and the disciplinary records of inmates; 2) "double bunking" cells containing  
 17 inmates that have threatened violence upon other inmates; 3) taking an unreasonably long time to  
 18 enter an inmate's cell to render emergency medical care; 4) failing to protect restrained inmates from  
 19 violent attacks.

20      33. That the unconstitutional practices, policies, regulations or customs of the Defendants  
 21 were the direct cause of Beltran's injuries, pain and untimely death.

22      34. That Plaintiffs herein are entitled to general and special damages in an amount in  
 23 excess of \$10,000.00. Furthermore, due to the Defendants deliberate indifference to Defendants'  
 24 obligation to protect Beltran, Plaintiffs are entitled to punitive damages to the extent allowed by law.

25      35. That it has become necessary for Plaintiffs to retain the services of an attorney to  
 26 pursue this action and Plaintiffs are entitled to an award of reasonable attorney's fees and costs in  
 27 prosecuting this action.

28 ...

1 IV.

2                   **SECOND CAUSE OF ACTION**  
3                   (NRS. 41.085; Claims for Wrongful Death against all Defendants)

4                 36. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
5 through 35 of the Complaint and hereby incorporates the same as though fully set forth herein.

6                 37. That Defendants acted with willful misconduct and/or gross negligence, which was  
7 the direct and proximate cause of Beltran's untimely death on December 28, 2006.

8                 38. That Defendants purposely and knowingly placed Beltran into a cell with Potter, an  
9 inmate known to be violent and who, on numerous occasions, had threatened continued violence of  
10 the exact nature inflicted upon Beltran.

11                 39. That Defendants are liable to Beltran's estate and Beltran's heirs pursuant to NRS.  
12 41.085.

13                 40. That Plaintiffs herein are entitled to general and special damages in an amount in  
14 excess of \$10,000.00. Furthermore, Defendants actions were willful, wanton and reckless and  
15 therefore liable for exemplary and punitive damages pursuant to NRS. 41.085(5)(b).

16                 41. It has become necessary for Plaintiffs to retain the services of an attorney to pursue  
17 this action and Plaintiffs are entitled to an award of reasonable attorney's fees and costs in  
18 prosecuting this action.

19 V.

20                   **THIRD CAUSE OF ACTION**  
21                   (Negligent Training, Supervision and Retention against the Nevada Department of  
22 Corrections)

23                 42. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
24 through 41 of the Complaint and hereby incorporates the same as though fully set forth herein.

25                 43. That an employer has a duty to use reasonable care in the training, supervision and  
26 retention of its employees to make sure that those employees are fit for their positions.

27                 44. That the NDOC failed to use reasonable care in the training and supervision of its  
28 employees charged with the administration of inmate conditions of confinement and operations  
related to control and handling of a violent inmate.

45. That the NDOC failed to use reasonable care in the training and supervision of its employees with regard to the policy of "double bunking" violent inmates based upon sentence structure, institutional behavior and disciplinary records.

46. That Plaintiffs herein are entitled to general and special damages in an amount in excess of \$10,000.00. Furthermore, due to the Defendants deliberate indifference with respect to its obligation to protect Beltran, Plaintiffs are entitled to punitive damages to the extent allowed by law.

47. That it has become necessary for Plaintiffs to retain the services of an attorney to pursue this action and Plaintiffs are entitled to an award of reasonable attorney's fees and costs in prosecuting this action.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff's expressly reserving their right to amend this Complaint at the time of, or prior to trial, prays for judgment against Defendants as follows:

1. For special, general and compensatory damages against Defendants individually, jointly and severally in excess of \$10,000 in an amount to be proved at trial;
2. For exemplary and punitive damages in an amount to be proved at trial;
3. For attorney's fees and costs of suit incurred herein;
4. For all applicable interest; and
5. For such other and further relief that this Court deems just and proper;

DATED this 12 day of May, 2008.

HAM GALLIHER, LLP

By:

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